IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL REVISION APPLICATION NO.535 OF 2003

Asim Kumar Gupta & anr. Petitioners
vs.
Maruti Sahibrao Bhapkar & ors. Respondents

Mr.N.V.Walawalkar for the petitioners.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

Heard Mr.Walawalkar, the learned counsel for the petitioners-defendants in Regular Civil Suit No.98/2003. By the impugned order dated 15.11.2003 the learned Civil Judge, J.D., Akurdi has decided three different applications filed at Exhibits 5, 19 and 23. The application at Exhibit 5 was for temporary injunction, Exhibit 19 was an application under Section 9-A read with Order 7 Rule 11 of CPC and Exhibit 23 was an application under Section 9-A(2) of C.P.C. This revision impugns the order to the extent it has rejected the application at Exhibit 19.

2. It is clear from the material on record that RCS No.98/2003 is a suit filed under Section 91 of C.P.C. and the trial Court was prima facie of the view that there were issues of public nuisance and wrongful acts

affecting public, requiring consideration during the trial of the Suit. Mr.Walawalkar, the learned counsel, submitted that the reasoning given by the trial Court while rejecting the application at Exhibit 19 is not in consonance with the law and unless the reasoning meets the legal requirement, the impugned order cannot be sustained.

3. The impugned order has been passed almost about two years back and in any case, if the suit is decreed against the appellants, they have a remedy of appeal. The impugned order has to be viewed keeping in mind that the suit has been filed under Section 19 of CPC.

4. Civil Revision application is, therefore, disposed of with liberty to the petitioners-applicants to agitate the issue of trial Court's jurisdiction to entertain the suit in an appeal, if and when there is an occasion to the petitioners-applicants to file such an appeal in the instant case.

(B.H. MARLAPALLE,J.)